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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate
compilation

भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

संघ राज्य क्षेत्र प्रशासनों को छोड़कर केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएँ
Orders and Notifications issued by Central Authorities (other than Administrations of
Union Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 28 नवम्बर, 1984

IN THE HIGH COURT OF KARNATAKA AT
BANGALORE

Dated the 29th day of June, 1984

BEFORE

HON'BLE MR. JUSTICE P. A. KULKARNI
ELECTION PETITION NUMBER 1 OF 1984

BETWEEN

K. S. Rajagopal
S/o. Srikantaiah,
119, 4th Main Road,
K. R. Extension,
Tiptur, Tumkur Dt.

PETITIONER

ELECTION COMMISSION OF INDIA

New Delhi, the 28th November, 1984

(By Sri Mohan Santangoudar,
Advocate)

AND

1. Dr. Sarojini Mahishi, Member of Parliament,
New Delhi.
2. M. S. Gurupadaswamy, Member of Parliament,
New Delhi.

आ. अ. 110 :—1982 की निर्वाचन अधीन स 1 में कर्नाटक
उच्च न्यायालय, बंगलूर के तारीख 29 जून, 1984 के निर्णय को
लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा
106 के अनुसरण में, निर्वाचन आयोग इसके द्वारा प्रकाशित
करता है।

(संलग्न निर्णय यहाँ छापें)

[सं. 82/कर्ना.-रा स./1/84]
आदेश से,
जो. ना. नागर, अवसर सचिव
भारत निर्वाचन आयोग।

O.N. 110.—In pursuance of section 106 of the
Representation of the People Act, 1951 (43 of 1951),
the Election Commission hereby publishes the judg-
ment of the High Court of Karnataka at Bangalore
dated 29th June, 1984, in Election Petition No. 1 of
1984.

3. K. G. Thimmegowda, Member of Parliament, New Delhi.
4. Kolluru Mallappa, Member of Parliament, New Delhi.
5. D. M. Siddaiah, C/o K.P.C.C. (1) Office Sadashivanagar, Bangalore.
6. G. B. Raikar, Advocate, High Court, Bangalore.
7. K. S. Singrigouda Secretary to Karnataka Legislature and Returning Officer for Election to the Council of States.

RESPONDENTS

Election Petition under Section 81 of the Representation of People Act, 1951 challenging the election of respondent Nos 1 to 4 to the Rajya Sabha.

This Petition coming on for hearing this day, the Court made the following :

ORDER

This is a Petition by the unsuccessful candidate under Section 81 of the Representation of People Act, 1951, challenging the election of respondent-Nos 1 to 4 to the Rajya Sabha.

2. The case of the petitioner is that he was a contestant for the Election to the Rajya Sabha which was held on 29-3-1984. The results were declared on the same day i.e. 29-3-1984. The respondent 1 to 3, who were contesting as Janata Candidates, were elected. Respondent-4, who was a Congress(I) candidate, was also elected. Respondent 5, who was also contesting as Congress (I) Candidate, lost in that election. Respondent-6 retired from the election.

He filed his nomination paper in time on 19-3-1984 after having deposited Rs. 250/-. The Returning Officer-Respondent-7 acknowledged the same. The petitioner was given notice that all the nomination papers would be scrutinised on 20th March, 1984 at 9 A. M. On 20th March, 1984, respondent-7 scrutinised the nomination papers of the petitioner and the same was approved and accepted as correct and valid. But strangely a letter dated 21-3-1984 was issued to the petitioner stating that his nomination paper was rejected on the ground that he had not filed the current voters' list along with the nomination paper. According to him, rejection of the nomination paper is illegal.

That is the only ground on which he has challenged the election held on 29-3-1984.

3. The office raised an objection that the petition had been filed beyond the prescribed period of limitation of forty-five days.

4. Sri Santangoudar has filed I.A.I under Section 5 of the Limitation Act for the condonation of the delay alleging that the results were declared on 29-3-1984 itself and that the Election Petition ought to have been filed on 13-5-1984. The Court was closed for summer vacation from 21-4-1984 to 27-5-1984 (both days inclusive). He also further alleged that during the vacation, the petitioner was not feeling well and hence he could not contact his advocate during vacation. He further urged that on 28-5-1984, the

petitioner filed a memo before this Court requesting to issue a receipt order for depositing Rs. 2,000/-. According to him, the deposit of costs is a condition precedent to the filing of the election petition. The receipt order was issued to him in the evening of 28-5-1984 at about 4.15 p.m. According to him, as the Reserve Bank was closed after 2.30 p.m., the petitioner could not deposit Rs. 2,000 on 28-5-1984. He alleged that on the very next day i.e., 29-5-1984, he deposited Rs. 2,000/- in the Reserve Bank. According to him, immediately thereafter, he produced the receipt for having deposited Rs. 2,000/- in the Reserve Bank of India, in the office of this Court. According to him, on that day, the certificate was issued at about 4.15 p.m. to him about the said deposit. Immediately there after, he in order to present the election petition went to the Election Petition Branch along with the said certificate. It was already 4.30 p.m. and he office was closed. Hence, the petitioner could not file the Election petition on 29-5-1984. So, he filed the Election Petition on 30-5-1984.

5. Learned Counsel Sri Santagoundar referred me to a decision reported in AIR 1976 SC 105 Mangru Ram and another V. Municipal Corporation of Delhi, wherein it is clearly held:

"Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29, sub-section (2), it can be availed of for the purpose of extending the period of limitation prescribed by a special or local law if the applicant can show that he had sufficient cause for not presenting the application within the period of limitation. It is only if the special or local law expressly excludes the applicability of Section 5, that it would stand displaced."

Similar is the principal laid down by this Court in State of Mysore v. H. Subba Rao 1973(2) Karnataka Law Journal 288.

6. In P. Naranappa v. A. Shanker Alva and others-972(2) K.L.J. 288—it is held—

"An election petition which ought to have been filed on 26-4-1972 was filed on 28-4-1972. Under the notification issued by the Chief Justice, the High Court had recessed for summer vacation from 17-4-1972 to 21-5-1972, and the High Court will be closed for summer vacation from 17-4-72 to 21-5-72, and no appeal for application of civil nature will be received during the vacation except in cases where it is sought urgently to obtain an order of injunction or attachment or stay of proceedings, etc." and that "Election Petitions presented to the High Court under S. 81 of the Representation of People Act will however be received during the vacation."

On account of the said notification issued by the High Court, it was held that the High Court had neither closed nor had suspended its work in regard to receiving of election petitions and therefore the petitioner could not claim the benefit of Section 10 of the General Clauses Act.

7. In *Vidyacharan Shukla v. Khubchand Baghel and others*—AIR 1964 SC 1099—it was held —

“the period of Limitation is provided by Article 156 of Limitation Act and the Special Act prescribing different period under S. 116A (3), it is appellant that is entitled to exclude time required for obtaining copy of order under S. 12(2) of the Limitation Act.”

8. Similar is the principle laid down in *D. P. Mishra v. Kamal Narayan Sharma*—AIR 1970 SC 1477.

9. In *Bhogilal Pandya v. Maharawal Laxman Singh and another*—AIR 1968 Rajasthan 145 which was an election case, it was held that an Election Petition was an application within the schedule of the Limitation Act and that provisions of Section 12(1) read with S. 29(2) of the Limitation Act apply to such petitions and the petitioner was entitled to exclude the day on which the result of the election was announced.

10. Similar is the principle laid down in *Bhakti Bh. Mondal v. Khagendra K. Bandopadhyay* AIR 1968 Calcutta 69.

11. There does not appear to be any provision in the Representation of People Act excluding the applicability of Section 5 of the Limitation Act. Therefore, Section 29 of the Limitation Act would be applicable to the present case.

12. The Notification issued by the Chief Justice for the summer vacation for 1984 reads as :—

“It is hereby notified that the High Court of Karnataka will remain closed for Summer vacation from Monday the 23rd April, 1984 to Sunday the 27th May 1984 (both days inclusive).

No appeals, petitions or applications of Civil nature will be received during the vacation except in cases where it is sought to be obtained urgent interim orders like temporary injunction, attachment and/or the stay of proceedings.

Criminal Appeals, Criminal Revision Petitions and urgent applications in Criminal matters will be received during the summer vacation.

During the summer vacation, the office of the High Court will be kept open from 10-15 a.m. to 4 p.m. from Monday to Friday (both days inclusive) in each week. Saturdays will not be working days during the summer vacation. Papers will be received from 10-30 a.m. to 1 p.m. on the days on which the office will be open.

Vacation Benches mentioned hereunder will sit in Court Halls mentioned against them on the days noted below at 10.30 a.m. during the vacation to hear urgent matters. All matters of the nature referred to above filed upto and inclusive of the day previous to the sitting day will be posted for hearing. But those filed on the sitting day will not be posted out that day except by special

orders of the Vacation Bench or the Vacation Judges as the case may be.”

12. Therefore, this notification does not cover the election petition at all. The petitioner was entitled to wait till the reopening day of the Court. Therefore, question of limitation does not arise at all till the reopening day of the Court.

13. Section 117 of the Representation of the People Act says that the petitioner shall deposit in the High Court in accordance with the Rules of the High Court sum of two thousand rupees as security for the costs of the petition. Relevant Rules are contained in the Procedural Rules. Rule 22 reads as :

“22. The security for costs shall be paid in cash. Every petition shall be accompanied by a memorandum with a certificate from the Accounts Branch of the High Court that an amount of Rs. 2,000/- has been deposited as security.

14. According to him, he applied for the receipt order on 28-5-1984 and the office issued the receipt order to him at about 4.15 p.m. According to him, he could not deposit the amount in the Reserve Bank on that day i.e. 28-5-1984 as the Reserve Bank was closed at 2.30 p. m. He claims to have gone to the Reserve Bank on 29-5-1984 and claims to have deposited Rs. 2000/- in the Bank on that day. He came back to the office and applied for a certificate about the said deposit. According to him the said certificate was issued at 4.15 p.m. on 29-5-1984. By the time he went to the Election Branch Office thereafter, the office was closed as it was already 4.30 p.m. Thus he claims to have filed the Election Petition on 30-5-84. Shri. M. N. Venkatachalaiah, J., while dealing with similar point in Election Petition Nos. 27, 32, 36, 37, 38, 51, 60, 61, 63, 65, 68 and 73 of 1978 disposed on 15-9-1978, has said :

“The conclusion on point (b) is that the delay in issuing the receipt orders by the High Court office, however regrettable and unfortunate it may be, did not, by itself, render remittance of the security-deposit in time in the Reserve Bank of India, wholly impossible in the sense that it might still have been possible for petitioner, with greater and compensatory efforts and diligence, to have beaten the clock. But it must also be stated that the delay in issuing the receipt orders was, in no small way, a contributory cause for the unenviable position these petitioners have found themselves in.”

In view of the said decision, the simple circumstances that the receipt order was obtained by the petitioner late, and that the time was over on that day, and that he went to the Reserve Bank of India on the next date and deposited the money, and that he came to the office late and obtained the certificate of deposit late, were not sufficient grounds. Section 117 of the Representation of People Act is a mandatory provision which requires that the petitioner shall deposit a sum of Rs. 2000/- at the time of presenting the election petition itself. Section 86(1) says that the High Court shall dismiss the election petition which does

not comply with the provisions of Section 81 or 82 or 117. 81 prescribes that an election petition be filed within 45 days from the date of election of the returned candidate. Sections 81, 82 and 117 do not leave any discretion to the court. I.A. No. 1 is dismissed. In the result, the election petition is dismissed on the ground that it is barred by limitation. The amount of Rs. 2000/- in deposit may be paid to the petitioner or his counsel.

[No. 82/KT-CS/1/84]

O. N. NAGAR, Under Secy.
Election Commission of India

नई दिल्ली, 23 नवम्बर, 1984

क्र. अ. 111 :—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 22 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का उपयोग करते हुए, निर्वाचन आयोग एतद्वारा निदेश देता है कि इसकी अधिसूचना संख्या 434/लक्षद्वीप/84-(2), दिनांक 15 अक्टूबर, 1984 से निम्नलिखित और संशोधन किए जाएंगे, अर्थात् :—

उक्त अधिसूचना के साथ संलग्न सारणी के स्तम्भ 2 में, क्रम संख्या 1 तथा 2 पर मौजूदा प्रविष्टियों के स्थान पर क्रमशः निम्नलिखित प्रविष्टियाँ प्रतिस्थापित की जाएँगी :—

1. तहसीलदार, अन्दरोथ ।
2. कृषि अधिकारी तथा पदेन उप-खण्ड अधिकारी, अमीनी ।

[संख्या 434/लक्षद्वीप/84 (2)]

आवेस से,

एस. आर. सेठी, अवर सचिव

New Delhi, the 23rd November, 1984

O.N. 111.—In exercise of the powers conferred by subsection (1) of section 22 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby directs that the following further amendments shall be made in its notification No. 434/LD/84 (2) dated the 15th October, 1984, namely :—

In column 2 of the table appended to the said notification, for the existing entries at serial Nos. 1 and 2, the following entries shall respectively be substituted :—

1. Tashildar, Androth
2. Agricultural Officer and Ex-Officio Sub-Divisional Officer, Amini.

[No. 434/LD/84(2)]

By Order,

S. R. SETHI, Under Secy.